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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN MARIANA ISLANDS**

13 UNITED STATES OF AMERICA,) CASE NO. 1:22-cv-00020

14 Plaintiff,)

15 vs.)

16 \$271,087.88 IN U.S. CURRENCY SEIZED)
17 FROM BANK OF SAIPAN ACCOUNT NO.)
18 ENDING IN LAST FOUR DIGITS 0157,)
19 HELD IN THE NAME OF "MCS")

20 MOTION TO DISMISS
21 VERTIFIED COMPLAINT FOR
22 FORFEITURE IN REM

23 and)

24 \$39,188.38 IN U.S. CURRENCY SEIZED)
25 FROM BANK OF SAIPAN ACCOUNT NO.)
26 ENDING IN LAST FOUR DIGITS 2098,)
27 HELD IN THE NAME OF "MCS,")

28 Defendants.) Date:
29) Time:
30) Judge:

31 CLAIMANTS Marianas Consultancy Services, LLC ("MCS") and Alfred Yue ("Yue"), by and
32 through their undersigned counsel, hereby move to dismiss the Verified Complaint for Forfeiture *In*
33 *Rem* (ECF No. 1) filed by the United States in the above-captioned case on December 30, 2022 (the
34 "Complaint"). This Motion is brought pursuant to Rule G(8)(b)(I) of the Federal Supplemental
35 Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions and Rule 12(b)(6) of the
36 Federal Rules of Civil Procedure. The Complaint fails to allege any viable predicate criminal offense
37 that would provide grounds to forfeit the defendant property (the "Defendants Funds"), in whole
38 or in part, as either proceeds of any specified unlawful activity or as an instrument of international
39

1 promotional money laundering.

2 Supplemental Rule G requires a forfeiture complaint to “state sufficiently detailed facts to
 3 support a reasonable belief that the government will be able to meet its burden of proof at trial,”
 4 which constitutes “a higher standard than ‘notice pleading.’” *United States v. Aguilar*, 782 F.3d 1101,
 5 1109 (9th Cir. 2015). Because the Complaint fails to state a claim upon which this Court could order
 6 the forfeiture to the United States of any of the Defendant Funds in this case, the Complaint must
 7 be dismissed. Fed. R. Civ. P. 12(b)(6) and Rules G(5)(b) and G(8)(b)(I) of the Supplemental Rules
 8 of Admiralty or Maritime Claims and Asset Forfeiture Actions.

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1 BACKGROUND
2

3 On November 7, 2019, pursuant to a still sealed search warrant issued by this Court based on
4 the allegations of a still sealed affidavit in support thereof in Misc Case 1:19-mc-00045, federal agents
5 raided the office of Claimant MCS in Saipan and seized all of Claimants' business and personal
6 records therein. The following day, pursuant to a separate, still sealed warrant and affidavit, federal
7 agents seized the Defendant Funds. On November 9, 2019, pursuant to a third still sealed warrant
and affidavit, federal agents seized funds from a personal savings account of Claimant Yue.

8 On January 3, 2020, the Internal Revenue Service ("IRS") noticed its intent to
9 administratively forfeit all of Claimants' seized funds including the personal savings account funds
10 of Claimant Yue. Claimants, through counsel, filed a timely claim with the IRS seeking the return
11 of the wrongly seized funds. See Complaint, ¶ 78. Despite the allegation of the Complaint that the
12 claim was denied (*id.*), the claim was never expressly denied by the IRS. The money was simply not
13 returned without explanation. Instead, the United States obtained numerous extensions of the
14 statutory deadline to file a civil forfeiture claim in the District Court,¹ all sought by the United States
15 *ex parte* and under seal and granted under seal in sealed Misc. Case 1:20-mc-00025.

16 In December 2022, apparently unable to find even a tenuous connection to any illicit activity
17 that they could wedge into a civil forfeiture claim, the United States finally returned to Claimant Yue
18 the funds it seized from his personal savings account and later returned additional funds federal
19 agents had seized from MCS' office and from Claimant Yue personally during their raid in November
20 2019. The funds seized from MCS accounts, however, are the Defendant Funds the United States
21 is attempting to civilly forfeiture by their Complaint in this case.

22 The following is Claimants' Memorandum of Points and Authorities in support of their
23 Motion to Dismiss Verified Complaint for Forfeiture *In Rem* and cause the Defendant Funds to be
24 returned to MCS without further delay.

25
26 ¹ See 18 U.S.C. § 983(a)(1)(A).

PLEADING STANDARD FOR CIVIL FORFEITURE COMPLAINTS

Because of the drastic nature of the remedy being sought, complaints for forfeiture *in rem* are subject to a heightened pleading standard. *See United States v. Aguilar*, 782 F.3d 1101, 1109 (9th Cir. 2015) (“[W]e have held that this is a higher standard than “notice pleading”); 12 Wright & Miller, Fed. Pract. & Proc. § 3242 (3d ed.) (explaining that the supplemental rules applicable to forfeiture actions “require[] a more particularized complaint than is demanded in civil actions generally;” “added specifics [are] thought appropriate because of the drastic nature of th[e] remedies” at issue).

In addition to satisfying Fed. R. Civ. P. 8(a), a federal, *in rem* forfeiture action also must satisfy the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. *See United States v. Real Prop. Located In Brentwood, California*, No. 15-cv-06794-RGK-AJWX, 2016 WL 11121402, at *2 (C.D. Cal. Mar. 15, 2016) (“In addition to satisfying the court’s standards set forth in *Iqbal*, in an *in rem* forfeiture action arising from a federal statute, a court must apply the [supplemental rules], which provide a slightly higher pleading standard.”); *United States v. One Gulfstream G-V Jet Aircraft*, 941 F. Supp. 2d 1, 14 (D. D.C. 2013) (requiring “a pleading that is somewhat more exacting than the liberal notice pleading standard contemplated by Rule 8(a)(2).”). Specifically, Supplemental Rule G requires a forfeiture complaint to “state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.” Supp. R. G(2)(f).

To satisfy this heightened pleading standard, a forfeiture complaint must allege enough facts for claimants to understand the government's forfeiture theories, undertake an adequate investigation, and draft a response to the allegations. *United States v. Aguilar*, 782 F.3d at 1108-09; *United States v. Mondragon*, 313 F.3d 862, 864 (4th Cir. 2002). A complaint also must meet the familiar *Iqbal* / *Twombly* standards applicable under Rule 8. *Real Prop. Located In Brentwood, Cal.*, 2016 WL 11121402, at *2. "Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Mere "labels and

1 conclusions" or a "formulaic recitation of the elements of a cause of action will not do." *Id.* The
 2 "complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is
 3 plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).²

4 In evaluating a motion to dismiss, the Court must (1) construe the complaint in the light
 5 most favorable to the government, and (2) accept all well-pleaded factual allegations and reasonable
 6 inferences therefrom as true. *United States v. \$50,040 in U.S. Currency*, No. 06-cv-04552 WHA, 2007
 7 WL 1176631, at *2 (N.D. Cal. Apr. 20, 2007). The Court is limited to the face of the complaint's
 8 allegations, judicially noticeable matters, and documents referenced in the complaint so long as their
 9 authenticity is not disputed. *Id.* at *1.

10 To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual
 11 matter, accepted as true, to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v.*
 12 *Twombly*, 550 U.S. at 570. A claim has facial plausibility when the plaintiff pleads factual content
 13 that allows the court to draw a reasonable inference that the defendant is liable for the misconduct
 14 alleged. *Ashcroft v. Iqbal*, 556 U.S. at 678; *Bell Atl. Corp. v. Twombly*, 550 U.S. at 556. Although
 15 allegations of material fact are taken as true and construed in the light most favorable to the
 16 nonmoving party (*Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-338 (9th Cir. 1996)), "conclusory
 17 allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure
 18 to state a claim." *Epstein v. Washington Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996). Dismissal
 19 can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under
 20 a cognizable legal theory. *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988).

21

22 ² See also *United States v. \$97,667.00 in U.S. Currency*, 538 F. Supp. 2d 1246, 1249 (C.D. Cal.
 23 2007) (applying the *Twombly / Iqbal* standard to a forfeiture complaint, stating: "The court is not
 24 required to accept as true, however, 'legal conclusions cast in the form of factual allegations if those
 25 conclusions cannot reasonably be drawn from the facts alleged.'") (quoting *Cholla Ready Mix, Inc.*
 26 *v. Civish*, 382 F.3d 969, 973 (9th Cir. 2004); *United States v. Real Prop. Located In Brentwood, Cal.*,
 2016 WL 11121402, *2 (applying *Twombly / Iqbal* standard to forfeiture action); *United States v. Real
 Prop.*, No. 18-cv-315-REW, 2021 WL 144245 (E.D. Ky. Jan. 15, 2021) (consistent with *Iqbal*,
 forfeiture rules require more than "threadbare elemental recital[s] supported by mere conclusory
 statements").

1 ALLEGED GROUNDS FOR FORFEITURE

2 The Complaint contains a single “claim for relief” essentially alleging, broadly and vaguely,
3 two statutory grounds for forfeiture of the Defendant Funds:4 A. International Promotional Money Laundering under 18 U.S.C. § 981(a)(1)(A) as “property
5 involved in” international promotional money laundering, an attempt or conspiracy³ regarding the
6 alleged promotion of the specified unlawful activities (“SUAs”) of wire fraud⁴ and/or honest services
7 wire fraud⁵ (¶¶ 3, 19, 48, 66, 76, 77 and 80); and8 B. Proceeds Money Laundering under 18 U.S.C. § 981(a)(1)(C) as “proceeds traceable to”
9 the SUAs of money laundering,⁶ wire fraud⁷ and/or honest services wire fraud,⁸ an attempt or a
10 conspiracy (¶¶ 3, 17-18, 68, 76, 81 and 82).11 As an alleged factual basis, the Complaint avers that these two forfeiture grounds fall into one
12 or more of three alleged “schemes to defraud”:13 • Scheme 1 - The United States alleges that Complainants’ defrauded the Commonwealth
14 Casino Commission (the “CCC”) by fraudulently misrepresenting to the CCC the scope of
15 Claimants’ services to “the Company” (also referred to herein as the “Casino Licensee”) for the
16 purpose of avoiding CCC licensing regulations and closer scrutiny by the CCC. Complaint, ¶¶ 33,
17 46-47. The United States further alleges that “Defendant Funds were transferred in a away that was
18 necessary to and enabled a fraud upon a government regulatory authority” (¶ 77) (emphasis added).
19 More specifically, it alleges that wire transfers of money were made to MCS’s account in the CNMI
20 from an account or accounts in Hong Kong with the intent to promote their alleged scheme to
21 defraud the CCC. ¶ 48.

22

23 ³ 18 U.S.C. §§ 1956(a)(2)(A) and (h)24 ⁴ 18 U.S.C. § 1343 through §§ 1956(c)(7)(A) and 1961(1)25 ⁵ 18 U.S.C. §§ 1346 and 1343 through §§ 1956(c)(7)(A) and 1961(1)26 ⁶ 18 U.S.C. §§ 1956(a)(1)(A), (h) and 1957(a) through §§ 1956(c)(7)(A) and 1961(1)⁷ 18 U.S.C. § 1343 through §§ 1956(c)(7)(A) and 1961(1)⁸ 18 U.S.C. §§ 1346 and 1343 through §§ 1956(c)(7)(A) and 1961(1)

1 • Scheme 2 - The United States alleges Honest Services Fraud by Claimants, other unnamed
 2 individuals and the Casino Licensee who “devised a scheme . . . [to provide] a stream of benefits to,
 3 for, or on behalf of CNMI government officials for the purpose of gaining preferential treatment for
 4 the Casino License.” Complaint, ¶ 49.

5 In furtherance of Scheme 2, Claimants allegedly used funds provided by the Casino Licensee
 6 for campaign contributions (¶ 50); paid for “overseas trips for CNMI government officials, . . . golf,
 7 meals, drinking, and karaoke” (¶ 51); and paid as “consultants” “[several] persons in the CNMI who
 8 could influence policy involving the Company” including one person “close to” a “political figure”
 9 (¶ 14, 58-60).

10 The United States also alleges, even more speculatively and implausibly, a supposed
 11 connection between Claimants’ “frequent cash withdrawals,” that allegedly “coincided with” some
 12 of the “numerous cash deposits” of two other individuals “or their business” and those unnamed
 13 individuals (not public officials) “frequent” payment of “substantial amounts of money” to a
 14 particular “political figure” with whom the two are “closely affiliated.” ¶¶ 11-13, 56-57.

15 The United States also refers to the these activities as Claimant Yue “[seeking] to influence
 16 [political figures] through unethical gifts.” ¶ 62.

17 With regard to the supposed benefits reaped through these alleged improper payments, the
 18 United States claims that, somehow without explanation, “the CNMI government extended the
 19 Casino Licensee uniquely favorable treatment” that included (¶ 61):

- 20 1. “allowing the Casino Licensee to escape liquidated damages after missing construction
 21 deadlines”;
- 22 2. “extending the Casino Licensee’s operation and related deadlines with little or no penalty”;
- 23 3. “amended regulations to accommodate the Casino Licensee’s development schedule”; and
- 24 4. “deferred enforcement of tax, labor, and other contractual obligations owed to the CNMI.”

1 The United States cites as “one example of particular importance,” in similarly conclusory
2 fashion, that unnamed public figures and “certain officials” supposedly “undermined various efforts
3 to mandate that the Casino Licensee either provide verifiable proof that it was financially capable
4 of completing its construction project, or to at least post a ‘completion bond.’” ¶ 62.

Finally, the United States alleges that funds transfers from Hong Kong to Claimants' accounts in the CNMI were "intended to promote" Scheme 2 (¶¶ 66-67) and that the Defendant Funds they now seek to forfeit "were part of and necessary to" Scheme 2 (¶ 77).

8 • Scheme 3 - The United States alleges a direct wire fraud violation (§ 1343) — defrauding
9 the CNMI government of tax revenue by falsely claiming business deductions from business income
10 in Claimants' annual income tax filings — with the resulting proceeds of the wire fraud, apparently,
11 being all or part of the Defendant Funds. Complaint, ¶¶ 69-75.

ARGUMENTS FOR DISMISSAL

13 To state a claim for civil forfeiture, the United States must allege the commission of a
14 predicate criminal offense. Here, the United States fails to allege a predicate criminal offense; thus,
15 it fails to state a civil forfeiture cause of action.

16 1. The allegations of Scheme 1 (defrauding the CCC) do not constitute wire fraud nor
17 otherwise constitute international promotional money laundering.

18 “The federal wire fraud statute makes it a crime to effect (with use of the wires) ‘any scheme
19 or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses,
20 representations, or promises.’” *Kelly v. United States*, 140 S.Ct. 1565, 1571 (2020) (quoting 18 U.S.C.
21 § 1343). The statute prohibits deceptive schemes intended to deprive a victim of money or property.
22 *Id.* (quoting *McNally v. United States*, 483 U.S. 350, 356 (1987)). The “object” of the deception must
23 be to obtain specific money or property not to more generally “influence government officials” or
24 otherwise interfere with State regulatory functions. *Id.* at 1572 (discussing *Cleveland v. United States*,
25 531 U.S. 12, 23 (2000) (where the court distinguished between property and regulatory power)).

1 “[The] property must play more than some bit part in a scheme: It must be an ‘object of the fraud.’”
 2 *Id.* 1573 (quoting *Pasquantino v. United States*, 544 U.S. 349, 355 (2005)). “[A] property fraud
 3 conviction cannot stand when the loss to the victim is only an incidental byproduct of the scheme.”
 4 *Id.*

5 In *Cleveland v. United States*, the Supreme Court reversed federal mail fraud convictions of
 6 defendants that made false statements when applying for and renewing licenses from Louisiana to
 7 operate video poker machines. 531 U.S. at 15. The Court found that the permits and licenses that
 8 were the object of the scheme to defraud were not “property” within the purview of 18 U.S.C. §
 9 1341. *Id.* (video poker licenses not property in the hands of the licensor). “It does not suffice ... that
 10 the object of the fraud may be come property in the recipient’s hands; for purposes of the mail fraud
 11 statute, the thing obtained must be property in the hands of the victim.” *Id.*

12 Louisiana’s annual video poker licensing requirements were “designed to ensure that licensees
 13 have good character and fiscal integrity” and to “assert the State’s legitimate interest in providing
 14 strict regulation of all persons, practices, associations, and activities related to the operation of . . .
 15 establishments licensed to offer video draw poker devices.” *Cleveland v. United States*, 531 U.S. at
 16 15, 20-21 (quoting various provisions of the Louisiana licensing statute).⁹
 17 The defendants had fraudulently concealed their ownership interests in the poker license applicant
 18 in successive annual poker license applications and renewals. *Id.* at 16-17. Those alleged § 1341 mail
 19 fraud violations were also the predicate criminal offenses upon which the defendants were indicted
 20 for money laundering and RICO violations. *Id.*

21
 22 _____
 23 ⁹ For comparison, the CCC regulations that are the subject of this alleged scheme were
 24 promulgated, among other purposes, “to ensure the suitability and compliance with the legal,
 25 statutory and contractual obligations of . . . persons licensed under this chapter” (NMIAC § 175-10.1-
 105(b)(2)) and “to ensure the good character, honesty, and integrity of [Casino Service Provider
 licensees] (NMIAC § 175-10.1-1375(g)). *See also* Complaint, ¶34 (“The purpose of [CCC regulation
 of Casino Licensee vendors] is to promote transparency, by subjecting those who engage in
 significant business activity with the Company to heightened diligence.”).

1 In holding that the video poker licenses were not “property” within the meaning of § 1341,
 2 the Supreme Court noted that “whatever interests Louisiana might be said to have in its video poker
 3 licenses, the State’s core concern is regulatory.” *Cleveland v. United States*, 531 U.S. at 21. The
 4 Supreme Court rejected the United States’ contention that licensing fees and licensing revenue were
 5 property interests out of which Louisiana had been defrauded finding that the fees did not make the
 6 licenses “property” in the hands of the State.” *Id.* at 21-22. “Licenses pre-issuance do not generate
 7 an ongoing stream of revenue. At most, they entitle the State to collect a processing fee from
 8 applicants for new licenses.” *Id.* The licenses are “purely regulatory.” *Id.*

9 The Supreme Court also eschewed the United States’ argument that Louisiana had a property
 10 interest in its “right to control the issuance, renewal, and revocation of video poker licenses.” *Id.* at
 11 23. “Even when tied to an expected stream of revenue, the State’s right of control does not create
 12 a property interest any more than a law licensing liquor sales in a State that levies a sales tax on
 13 liquor. Such regulations are paradigmatic exercises of the States’ traditional police powers.” *Id.*

14 With regard to Scheme 1, the allegations are indistinguishable from those the Supreme Court
 15 rejected in *Cleveland*. Here, the United States alleges as the SUA predicate criminal offense for
 16 international promotional money laundering that “the essence of the scheme to defraud was to
 17 materially understate the services of [Claimants] to [a Casino Licensee]” and that “the effects of the
 18 scheme to defraud were to frustrate the CCC’s ability to accomplish its mission of overseeing and
 19 regulating the [Casino Licensee’s] operations and to deprive the CCC of fees to which it was
 20 entitled.” Compliant, ¶ 33.

21 As the *Cleveland* Court held, the right to “more closely regulate” is not “money or property”
 22 within the meaning of the federal fraud statutes. *See* 531 U.S. at 23. “Transparency,” “heightened
 23 diligence” and the CCC’s “ability to perform its missions” (¶ 46) are purely regulatory functions, not
 24 money or property out of which the CCC can be defrauded in violation of the federal mail and wire
 25 fraud statutes.

26

1 Moreover, while the United States alleges that Claimants' deceitful conduct "avoided" annual
 2 license fees (¶ 46) and had "the effect of depriving the CCC of fees to which it was entitled." (¶¶ 33,
 3 47), there are no allegations that the object of the alleged scheme to defraud was to avoid the
 4 payment of licensing fees. *See Kelly v. United States*, 140 S.Ct. at 1573 (the "property must play more
 5 than some bit part in a scheme: It must be an "object of the fraud."). And while Claimants would
 6 suggest that such allegations, if they were included, would not be plausible given the other allegations
 7 of the Complaint, the Supreme Court's decision in *Cleveland* undoubtedly forecloses that allegation
 8 as a basis upon which to anchor a § 1343 wire fraud claim.

9 In sum, the allegations of the Complaint fail to state a claim for "international promotional
 10 money laundering" (18 U.S.C. § 1956(a)(2)(A)) on the basis of § 1343 wire fraud as a predicate
 11 criminal offense. Accordingly, there are no grounds under 18 U.S.C. § 981(a)(1)(A) for forfeiture of
 12 the Defendant Property based on alleged wire fraud.

13 Additionally, as argued below, while the United States' theory of the case as it relates to its
 14 separate "proceeds money laundering" theory remains elusive, it is likely that it intends to argue that
 15 the "international promotional money laundering" theory of Scheme 1 is also the factual and legal
 16 basis for its Scheme 2 and Scheme 3 theories to the extent they rely on the *use* of tainted funds in
 17 elemental support of "proceeds money laundering" grounds for forfeiture pursuant to 18 U.S.C. §
 18 981(a)(1)(C). However, because the money laundering basis for the Scheme 1 theory is legally
 19 untenable, it cannot be the source of any "tainted funds." Accordingly, to the extent that the grounds
 20 for forfeiture of the Defendant Property relies on any "tainted funds" from Scheme 1, and their being
 21 no other viable allegation of the source of any tainted funds, the "proceeds money laundering"
 22 grounds of the Complaint should be dismissed.

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1 2. The Complaint fails to allege a “quid pro quo” related to its allegations of “honest
 2 services fraud.”

3 Honest services fraud criminalizes only schemes to defraud that involve bribery or kickbacks.
 4 *See Skilling v. United States*, 561 U.S. 358, 408-09 (2010); *Black v. United States*, 561 U.S. 465, 471
 5 (2010). Generally, to prove honest services fraud the government must prove that the defendant
 6 engaged in “a scheme or artifice to ‘deprive another,’ by mail or wire, ‘of the intangible right of
 7 honest services.’” *United States v. Christensen*, 828 F.3d 763, 784 (9th Cir. 2015) (quoting 18 U.S.C.
 8 § 1346; then citing 18 U.S.C. §§ 1341, 1343). However, to prove honest services fraud in the form
 9 of bribery as the United States has alleged here, it must plausibly allege and then prove a *quid pro*
 10 *quo*. *See, e.g., United States v. Inzunza*, 638 F.3d 1006, 1013 (9th Cir. 2011) (citing *United States v.*
 11 *Kincaid-Chauncey*, 556 F.3d 923, 943 (9th Cir. 2009) (imposing a *quid pro quo* requirement where
 12 “the government’s theory is that a public official accepted money in exchange for influence”)).

13 [B]ribery requires a *quid pro quo*, which includes an “intent ‘to influence’ an official
 14 act or ‘to be influenced’ in an official act.” This may be contrasted to both a gratuity,
 15 which “may constitute merely a reward for some future act that the public official will
 16 take (and may already have determined to take), or for a past act that he has already
 17 taken,” and to a noncriminal gift extended to a public official merely “to build a
 18 reservoir of goodwill that might ultimately affect one or more of a multitude
 19 of unspecified acts, now and in the future.” []. This discussion is equally applicable to
 20 bribery in the honest services fraud context, and we thus conclude that bribery
 21 requires “a specific intent to give or receive something of value *in exchange* for an
 22 official act.” *United States v. Kemp*, 500 F.3d 257, 281 (3rd Cir. 2007) (emphasis in original) (quoting *United States*
 23 *v. Sun-Diamond Groumrs of Cal.*, 526 U.S. 398, 404-05 (1999) (emphasis in original)) (which was
 24 cited with approval in *United States v. Kincaid-Chauncey*, 556 F.3d at 943).¹⁰

25 ¹⁰ In a more recent bribery case, the Supreme Court found it appropriate to define honest
 26 services fraud with reference to the federal bribery statute itself, 18 U.S.C. § 201:

27 That statute makes it a crime for a “public official or person selected to be a public
 28 official, directly or indirectly, corruptly” to demand, seek, receive, accept, or agree “to
 29 receive or accept anything of value” in return for being “influenced in the performance
 30 of any official act.” An “official act” is defined as “any decision or action on any
 31 question, matter, cause, suit, proceeding or controversy, which may at any time be

1 The *quid pro quo* must “be clear and unambiguous, leaving no uncertainty about the terms
 2 of the bargain.” *United States v. Carpenter*, 961 F.2d 824, 827 (9th Cir. 1992). “The explicitness
 3 requirement serves to distinguish between contributions that are given or received with the
 4 ‘anticipation’ of official action and contributions that are given or received in exchange for a
 5 ‘promise’ of official action. *Id.* (quoting *United States v. Montoya*, 945 F.2d 1068, 1073 (9th Cir.
 6 1991) (quoting *McCormick*, 111 S.Ct. at 1818 (Scalia, J., concurring))). “When a contributor and an
 7 official clearly understand the terms of a bargain to exchange official action for money, they have
 8 moved beyond ‘anticipation’ and into an arrangement that the Hobbs Act forbids.” *United States v.*
 9 *Carpenter*, 961 F.2d at 827.

10 Here, the Complaint does not alleged that any particular “official acts” were undertaken by
 11 any particular public official that was the direct or indirect beneficiary of any illicit payments for any
 12 particular purpose. Instead, the Complaint avers in broad, conclusory terms a scheme to provide “a
 13 stream of benefits to, for, or on behalf of CNMI public officials for the purpose of gaining
 14 preferential treatment” for the Casino Licensee. While the Complaint piles on more conclusory,
 15 non-specific allegations and never actually names a single public official (even the “Doe” individuals
 16 of the Complaint are identified only as two “political figures” (¶¶ 13-14)), none of the allegations of
 17 the Complaint satisfy the United States’ obligation to plead non-conclusory, “sufficiently detailed
 18 facts to support a reasonable belief that the government will be able to meet its burden of proof at
 19 trial.” *See Rule G(2)(f).* None of the following allegations of the Complaint plausibly plead the
 20 requisite “clear and unambiguous” *quid pro quo* between Claimants and any particular public official
 21 with a fiduciary duty to the CNMI government that was in a position to influence an official act and
 22 that explicitly promised to do so in exchange for an illicit payment:

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pending, or which may by law be brought before any public official, in such official’s
 official capacity, or in such official’s place of trust or profit.”

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United States v. McDonnell, 136 S. Ct. 2355, 2365 (2016) (quoting 18 U.S.C. § 201).

1 • ¶ 49 “a stream of benefits to, for, or on behalf of CNMI government officials for the
 2 purposes of gaining preferential treatment for the Company”;

3 • ¶ 50 campaign contributions in unknown amounts to “various [unnamed] individual
 4 candidates, campaigns, inauguration committees, and political parties –including [but obviously not
 5 limited to] Individual 3 and Individual 4 with no alleged promises by an particular official or official
 6 acts in exchange;

7 • ¶ 52 “arranged and at least partially paid for several overseas trips for [unnamed] CNMI
 8 government officials (including Individual 4 on at least one occasion)” again with no alleged promises
 9 by any particular official to influence official acts in exchange therefor;

10 • ¶ 52 “frequently met with government officials for golf, drinking, and karaoke” with
 11 Claimant Yue “typically” paying the bill, still with no identification of any particular official much
 12 less an explicit promise from that official to influence officials acts in exchange for the golf, drinks
 13 and karaoke;

14 • ¶ 58 Claimant Yue “spent money on” unidentified “*persons* in the CNMI who could
 15 influence policy involving the Casino Licensee” (emphasis added) with no allegations that any of
 16 those persons were officials nor whether any of those persons, if officials, explicitly promised to
 17 perform or to influence official acts in exchange for the payments.

18 Instead of alleging any “official acts” promised by any official in exchange for any of the
 19 foregoing “benefits,” the Complaint broadly combines all of these supposed “benefits” and alleges
 20 they were collectively exchanged for “the CNMI government’s” extending the Casino Licensee
 21 “uniquely favorable treatment.” ¶ 61. Though the Complaint alleges that “Individual 3, Individual
 22 4, and other [unnamed officials]” were “involved in” “the CNMI government” extending that
 23 supposedly favorable treatment, there are no allegations of when and how any particular official
 24 promised to take or influence, nor actually took or influenced, any official act in furtherance of “the
 25 CNMI government” as a whole treating the Casino Licensee more favorably. *Id.*

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1 The United States' listed "examples" do nothing to impart necessary facts to the Complaint
 2 that would plausibly allege a *quid pro quo* involving any particular official receiving an illicit payment
 3 in exchange for a promise of "official acts" in exchange therefor.

4 "Official act" is a term of art defined in the Ninth Circuit as:

5 "Official act" means any decision or action on a matter involving the formal
 6 exercise of government power. The matter must be pending, or be able by law to be
 7 brought, before a public official, and the matter must be something specific and
 8 focused, rather than a broad policy objective. The official's action may include using
 9 his official position to exert pressure on another official to perform an official act, or
 giving a speech, do not qualify as taking of a specific action.

10 *Manual of Modern Criminal Jury Instructions for the District Courts of the Ninth Circuit* § 10.34
 11 (2021) (in relevant part). *See also* 18 U.S.C. § 201(a)(3).

12 Here, there are no allegations connecting any particular official to any decision the "CNMI
 13 government" made or did not make in relation to the Casino Licensee regardless of whether those
 14 decisions were or could have been "favorable" to it as the United States alleges. The closest the
 15 Complaint gets to even a marginally "specific" allegation of official influence, while still conclusory
 16 and inadequate, alleges only that Individual 3, Individual 4 and certain other unnamed officials
 17 "undermined various efforts" by some unidentified actor to "mandate" construction project
 18 assurances through some unidentified mechanism with no allegations of what any particular official
 19 did in furtherance of the undermining nor whether the allegedly undermined construction assurances
 20 was the result of an "official act." *See* Complaint, ¶ 62. Very little, if any, of the best read portions
 21 of that allegation satisfy even one of the several facts necessary to meet the Ninth Circuit's definition
 22 of an "official act" much less that plausibly plead a "clear and unambiguous" promise by an official
 23 to perform an "official act" to in exchange for bribe money.

24 Even the best reading of the completely speculative and conclusory insinuations of ¶¶ 56-57
 25 — that Claimant Yue delivered cash to two individuals "closely affiliated with Individual 3" who
 26 would in turn include that alleged cash in larger amounts of money they would frequently give to

1 Individual 3 — fails to identify Individual 3 as a public official that explicitly promised any “official
2 acts” again, regardless of whether any alleged “favoritism” — the vague and conclusory goal of the
3 illicit payments — could possibly have benefitted Claimants, the Casino Licensee and/or any other
4 would-be co-conspirators in exchange for the supposed cash payments.

5 Essentially, the Complaint is devoid of any specific allegations of the terms of an illicit
6 bargain. The United States’ allegations are, at most, a perverse recharacterization of money that
7 Claimants used to develop general good within the community as a whole towards the Casino
8 Licensee and its “controversial” business plan.

9 There are simply no plausible allegations in the Complaint identifying any public officials,
10 nor their positions, nor their receipt of influence money, nor of any agreement by an specific public
11 official to take or to influence any “official act” in exchange for campaign contributions and
12 “unethical gifts” to the public official, his or her family, associates, campaign or political party. It is
13 not enough for the United States to plead only that several unnamed public officials, directly or
14 indirectly, received illegal contributions and gifts and that these unnamed public officials may or may
15 not have had some unspecified influence over some unidentified public agency in a position to
16 provide non-specific “preferential treatment.”

17 In sum, the Complaint fails to make out a *prima facie* case for honest services wire fraud and,
18 without the SUA of the § 1346 violation, the allegations of the Complaint fail to state a claim for
19 “international promotional money laundering” (18 U.S.C. § 1956(a)(2)(A)) on the basis of that
20 predicate criminal offense.

21 As with the alleged predicate criminal offense of defrauding the CCC of their regulatory
22 authority, there are no grounds under 18 U.S.C. § 981(a)(1)(A) for forfeiture of the Defendant
23 Property based on “international promotional money laundering.” Accordingly, to the extent the §
24 981(a)(1)(A) forfeiture claim is based on the allegations of Scheme 1 and/or Scheme 2, that forfeiture
25 claim must be dismissed.

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1 3. **The Complaint fails to allege wire fraud related to Scheme 3 (tax evasion).**

2 Through Scheme 3, the Complaint alleges a direct wire fraud offense the proceeds of which
 3 are forfeitable pursuant to 18 U.S.C. § 981(a)(1)(C). Complaint, ¶ 69. To prove the predicate wire
 4 fraud offense, the government must show that the defendant “knowingly engaged in a scheme or plan
 5 to defraud or obtain money or property by means of false or fraudulent pretenses, representations,
 6 or promises.” *United States v. Miller*, 953 F.3d 1095, 1103 (9th Cir. 2020). “[T]he crime of wire fraud
 7 requires the specific intent to utilize deception to deprive the victim of money or property, *i.e.*, to
 8 cheat the victim.” *Id.* at 1099.

9 The United States must also plead and prove the jurisdictional element that the scheme to
 10 fraud was carried out with the use of wire communications in interstate or foreign commerce. *See*,
 11 *e.g.*, *United States v. Garlick*, 240 F.3d 789, 792 (9th Cir. 2001) (“[c]ourts have consistently
 12 construed Congress’ intent behind the mail fraud statute broadly, focusing on the use of the mails
 13 itself, not on the underlying scheme or a particular fraud victim.”). “[The focus of [the mail and wire
 14 fraud statutes] is upon the misuse of the instrumentality of communication.” *Id.* at 792 (quoting
 15 *United States v. Alston*, 609 F.2d 531, 536 (D.C. Cir. 1979)). “[I]t is the use of the mails for purpose
 16 of executing the scheme which gives the federal courts jurisdiction over the offense.” *Id.* (quoting
 17 *Mitchell v. United States*, 142 F.2d 480, 481 (10th Cir. 1944)).

18 Additionally, “foreign commerce” is a term of art which means “commerce with a foreign
 19 country.” 18 U.S.C. § 10. The use of a wire to transfer money occurring between foreign countries
 20 is not criminalized by the wire fraud statute. *See, e.g.*, *United States v. Weingarten*, 632 F.3d 60, 70-71
 21 and n.3 (2nd Cir. 2011) (discussing transportation “in foreign commerce” in an analogous context
 22 of sex trafficking between two foreign countries finding that, absent a “territorial nexus to the United
 23 States,” “foreign commerce” means between the United States and a foreign country (various
 24 citations omitted)).

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1 Here, the Complaint fails to allege the jurisdictional element of a wire communication in
 2 interstate or foreign commerce. The only wire allegations of the Complaint regarding Scheme 3 are
 3 the wholly conclusory allegations that:

4 - Claimant Yue and others “transmitted and caused to be transmitted electronic signals in the
 5 course of [the alleged scheme to defraud the CNMI of tax revenue]” (¶ 69);

6 - “The Company reimbursed [Claimant Yue] . . . by sending the money *directly* from one
 7 foreign bank account to another foreign bank account” (¶ 72) (emphasis added); and

8 - “The Foreign Parent Company wire-transferred . . . [reimbursement funds] to [Claimant
 9 Yue’s] Bank of China account . . . [and the] transfers did not transit any U.S. bank account or
 10 company” (¶ 73).

11 The Complaint is also devoid of any plausible allegations that any part of the Defendant
 12 Funds represent the “proceeds” of the alleged wire fraud violation and, thus, subject to forfeiture.
 13 To the contrary, as quoted above, the United States alleges that reimbursement transfers to Claimant
 14 Yue that avoided taxation by the CNMI were sent “directly from one foreign bank account to another
 15 foreign bank account.” Complaint ¶ 72. *See also* ¶ 73 (reimbursement funds “did not transit any U.S.
 16 bank account or company.”). Regardless of the jurisdiction defect with regard to the wire fraud
 17 predicate offense and the efficacy, otherwise, of the United States’ tax avoidance theory of wire fraud,
 18 it is not alleged and it cannot be proven that any of the Defendant Funds are the proceeds of any
 19 fraudulent avoidance of CNMI taxation on funds allegedly spent and later reimbursed with separate
 20 funds from one foreign account to another foreign account.

21 Also, the common-law “revenue rule” arguably applies to this case. *Cf. Pasquantino v. United*
 22 *States*, 544 U.S. 349, 361 (2005) (in a *prosecution* for a wire fraud offense, 18 U.S.C. § 1343 does not
 23 derogate from the “well-established revenue rule principal”). The common-law revenue rule, “at its
 24 core” prohibits “the collection of tax obligations of foreign nations.” *Id.* The *Pasquantino* Court
 25 found the prosecution of a customs tax fraud on Canada different from the “classic examples of

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1 actions traditionally barred by the revenue rule.” *Id.* at 362. That case was the United States
 2 enforcing its own penal laws “not a suit that recovers a foreign tax liability, like a suit to enforce a
 3 judgment.” *Id.* (“This is a criminal prosecution by the United States in its sovereign capacity to
 4 punish domestic criminal conduct.”).

5 Here, however, the United States is not prosecuting a criminal violation of 18 U.S.C. § 1343,
 6 but seeking to collect, by civil forfeiture, what it alleges is Claimants’ tax liability to the CNMI.
 7 Claimants submit that the nature of this case falls squarely within the prohibition of the otherwise
 8 time honored common-law revenue rule.

9 In sum, the United States cannot make out a claim for forfeiture grounded on the allegations
 10 of Scheme 3 with wire fraud as the predicate offense because: (1) there was no wire communication
 11 in interstate or foreign commerce, (2) no part of the Defendant Funds are “proceeds” of or otherwise
 12 traceable to Scheme 3, and (3) the civil forfeiture proceeding to collect Claimants’ alleged tax
 13 liability to the CNMI is barred by the common-law revenue rule. Accordingly, the United States’
 14 claim of forfeiture based on Scheme 3 must be dismissed.

15 **4. There are no plausible “proceeds” allegations to support forfeiture based on 18 U.S.C.**
 16 **§ 981(a)(1)(C) (“proceeds money laundering”).**

17 In order to show “proceeds money laundering,” 18 U.S.C. § 1956(a)(1)(A) requires the
 18 government to prove that a defendant participated in or attempted to participate in a financial
 19 transaction knowingly involving the “proceeds” of an SUA with the intent to promote or further an
 20 SUA. *See, e.g., United States v. Ali*, 620 F.3d 1062, 1071 (9th Cir. 2010) (reversing promotion money
 21 laundering convictions because the government failed to specifically show that profits from the
 22 fraudulent scheme were used in furtherance of the defendants’ continuing fraudulent scheme).
 23 “Promotional money laundering^[11] is ‘different from traditional money laundering because the

24
 25 ¹¹ Referred to herein as “proceeds money laundering” for clarity in order to distinguish it
 26 conceptually from both “international promotional money laundering” which is based on different
 subsections of 18 U.S.C. § 1956 (and already tainted funds that are the subject of 18 U.S.C. § 1957).

1 criminalized act is the reinvestment of illegal proceeds rather than the concealment of those
 2 proceeds.” *United States v. Wilkes*, 662 F.3d 524, 545 (9th Cir. 2011) (quoting *United States v. Jolivet*,
 3 224 F.3d 902, 909 (8th Cir. 2000)).

4 Here, however, none of the United States’ factual contentions with regard to any of their three
 5 alleged “schemes” actually involved the *proceeds*, in whole or in part, of specified unlawful activity.
 6 Moreover, the few references to “proceeds” that are actually found in the allegations of the
 7 Complaint are wholly conclusory and untethered to any particular theory the United States may
 8 intend to argue underlies its amalgamous forfeiture claim. *See, e.g.*, Complaint ¶ 3 (“the second
 9 scheme involved . . . transacting in criminal proceeds”), ¶ 4 (Defendant Funds were “proceeds of the
 10 crimes”), ¶ 17 (Defendant Funds “constitute or were derived from proceeds traceable to . . . wire
 11 fraud”), ¶ 18 (simply quotes the definition of “proceeds” in § 981(a)(2)(A)), ¶ 19 (merely cites the
 12 title of 18 U.S.C. §1957), ¶ 68 (alleges in conclusory fashion that “some of the funds transferred from
 13 Account 1 to Account 2 consisted of . . . proceeds of the honest services fraud scheme”), and ¶ 81
 14 (“Defendant Properties constitute or are derived from proceeds traceable to [money laundering
 15 and/or wire fraud].”).

16 Additionally, the Complaint insufficiently alleges that any tainted funds were, in fact, the
 17 “proceeds” used to promote money laundering as opposed to the mix of internationally wired funds
 18 sent for various purposes, none of which are or can be attributed to the use of tainted funds from any
 19 articulable “scheme to defraud.” *See, e.g.*, *United States v. Ali*, at 1072 (9th Cir. 2010); *United States*
 20 *v. Wilkes*, 662 F.3d 524, 545 (9th Cir. 2011) (“transactions that create the criminally-derived proceeds
 21 must be distinct from the money laundering transaction because money laundering criminalizes a
 22 transaction in proceeds not the transaction that creates the proceeds.” (Citations omitted.)).

23 Assuming, arguendo, that the United States’ theory is that the *international* wire transfer of
 24 funds to *promote* an SUA (§ 981(a)(1)(A) by a violation of 1956(a)(2)(A)) makes those
 25 internationally transferred funds “proceeds” of the violation of the SUA itself, the allegations of the
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1 Complaint are still legally insufficient to support a “domestic” promotional money laundering theory
 2 of forfeiture, i.e., “proceeds money laundering.”

3 First, as detailed above, the alleged scheme to defraud the CCC (Scheme 1) does not
 4 constitute international promotional money laundering under 18 U.S.C. §§ 981(a)(1)(A) and
 5 1956(a)(2)(A). That being the case, none of the funds sent by international wire pursuant to Scheme
 6 1 can be classified as tainted funds, i.e., “proceeds” of some other money laundering or wire fraud
 7 SUA. Accordingly, Scheme 1 does not provide grounds for forfeiture based on proceeds money
 8 laundering.

9 Second, even if there is any legal merit to the United States’ honest services fraud allegations
 10 (Scheme 2), the international wire transfers allegedly intended to promote that scheme (or any SUA)
 11 were not, themselves, proceeds of the honest services fraud they were intended to promote and the
 12 United States has not alleged any other basis upon which to characterize the funds as “proceeds” of
 13 some SUA. Accordingly, Scheme 2 also does not provide grounds for forfeiture based on proceeds
 14 money laundering.

15 Finally, with regard to alleged tax evasion scheme to defraud (Scheme 3), the allegations of
 16 the Complaint are that funds in MCS’ two CNMI bank accounts were expended (¶¶ 31, 74) and then
 17 reimbursed from a foreign account in Hong Kong to a foreign account of Claimant Yue in China (¶¶
 18 30, 72, 73). Regardless of the efficacy of the allegations of fraudulent tax filings with the CNMI
 19 government, it cannot be said that any of the Defendant Funds — funds in the CNMI accounts —
 20 were *proceeds* of any tax fraud. The proceeds — presumably a marginal percentage of the reimbursed
 21 expenses that were not included as income in Claimant Yue’s income taxes — would be a part of the
 22 funds paid in China not any part of the Defendant Funds the United States wrongly seeks to forfeit.

23 In sum, there are no tenable allegations in the Complaint that any *proceeds* of money
 24 laundering or any SUA were used in a scheme to perpetrate another SUA. Accordingly, the Court
 25 must dismiss all of the United States’ forfeiture grounds based on 18 U.S.C. § 981(a)(1)(C) and/or
 26

1 || § 981(a)(1)(A) claiming violations of §§ 1956(a)(1)(A) or 1957.

CONCLUSION

4 In most favorable light, with all reasonable inferences drawn in favor of the United States, its
5 Complaint fails to plead plausible grounds on which the Court could order forfeiture of any of the
6 Defendant Funds. The Complaint must be dismissed.

8 Respectfully submitted this 21st day of April, 2023.

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1 CERTIFICATE OF SERVICE
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3
4

5 I certify that the following were served with a copy of the foregoing via the Court's Case
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10 April 21, 2023

11 /s/ Mark B. Hanson

12 DATED: _____

13 MARK B. HANSON